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TOWN ATTORNEY REPORT

DATE: September 22, 2006

FROM: Monroe D. Kiar

RE: Litigation Update

1. **Spur Road Property:** As indicated by Mr. Willi to the Town Council at its meeting of January 2, 2003, Mr. Burke advised Mr. Willi that the 4<sup>th</sup> District Court of Appeal had affirmed the decision of the Florida Department of Transportation to accept the bid of Kevin Carmichael, Trustee, for the sale and purchase of the property which forms the subject matter of the State Road 84 Spur property litigation. At the Town Council Meeting of February 5, 2003, Mr. Willi requested that the Town Council grant him authority to take whatever legal action was necessary to obtain the property in question. That authority was given to him by the Town Council. At the Town Council Meeting of November 5, 2003, the Town Council authorized Mr. Willi to retain the law firm of Becker & Poliakoff to institute an eminent domain proceeding relevant to this property. A Special Executive Session with the attorneys for Becker & Poliakoff and the Town Council was conducted on December 17, 2003. Thereafter, the Town Attorney spoke with Mr. Daniel Rosenbaum, our special legal counsel, who indicated that the attorneys in his office were finalizing with the retained professionals, the issues that have been addressed. On February 26, 2004, the Town Attorney spoke with Mr. Rosenbaum's colleague, who advised the Town Attorney that the survey the appraiser was relying upon for determining value that the Town needs to make for a determination of its good faith offer to the potential condemnee, if the Town decides to exercise its power of eminent domain, did not reflect all of the encumbrances upon the subject site. Thereafter, all of the documents pertaining to encumbrances, reservations, easements, etc., upon the site given to the attorneys by Attorneys' Title Insurance Company were forwarded to the surveyor to make sure the documents were properly reflected in the survey so the appraiser could properly appraise the property. On April 15, 2004, the Town Attorney spoke with Mr. Daniel Rosenbaum and as indicated above, Mr. Rosenbaum stated that there were two outstanding issues which were

with the outside vendors that needed to be resolved before definitive action by the Town Council could be taken. One issue involved the need for additional information on a survey commenced by the Town, which had necessitated a several week delay. The surveyors indicated to Mr. Rosenbaum that they needed additional documentation and this was forwarded to them by his office. The other issue involved a meeting which was scheduled by Mr. Rosenbaum and his staff with the Town's Land Planner to conclude the available uses of the subject site. Mr. Rosenbaum indicated that after these two issues have been dealt with, he anticipated that his firm would be proceeding in such manner as to move this matter forward aggressively. On April 28, 2004, the Town Attorney spoke with Mr. Jeff Rembaum, Mr. Rosenbaum's colleague. Mr. Rembaum indicated that his office was still waiting on the Town's outside land use expert to opine as to the available use of the site. Additionally, he indicated they were awaiting the revised survey that the appraiser could rely upon in determining the value. On May 13, 2004, the Town Attorney spoke with Mr. Rosenbaum, who indicated that his office had made significant progress on the technical issues and that all experts were on track with regard to the proposed time table for initiating the legal action. On May 26, 2004, the Town Attorney spoke with a representative for Mr. Rembaum's office, who indicated that according to her belief, the status of this matter remained the same. This was later reconfirmed by Mr. Rosenbaum personally in a telephone conversation with the Town Attorney on May 27, 2004. On June 10, 2004, the Town Attorney spoke with Mr. Rosenbaum, who indicated that the incompleteness contained in the initial survey had been addressed and his current surveyor was completing the survey so that it may then be transmitted in a workable form to the appraiser. He indicated once the appraisal had been obtained, his firm would be able to commence litigation. On June 29, 2004, the Town Attorney spoke with Attorney Jeff Rembaum, who advised that his office expected to receive the final report from the Town's land use expert within the next few days and once received, his appraiser could then finish his report. On July 26, 2004, the Town Attorney spoke with Mr. Rembaum, who indicated that his office had received the report from the land use expert as to the available uses which the appraiser needed in order to prepare its appraisal. Mr. Rembaum indicated on August 11, 2004, that Staff had recently redefined the area of potential taking to be in conformity with the Town's existing roadways. He indicated that this would require additional surveying work by his surveyor, and that his evaluation experts were currently working on their appraisal of the subject property. On August 24, 2004, the Town Attorney spoke with Attorney Jeff Rembaum as to the current status of the proposed eminent domain proceeding. Mr. Rembaum indicated once again that due to the fact that Staff had redefined the area of potential taking, that his surveyors were conducting additional surveying work which he expected to be completed shortly and this would allow his evaluation experts to complete their appraisal of the subject property. He again, indicated that it was his hope to be before the Town Council shortly with a presentation. On September 8, 2004, the Town Attorney spoke with Mr. Daniel Rosenbaum who advised the Town Attorney that the revised sketches for the proposed taking complete with drainage and related areas, was prepared on August 30, 2004, and the sketches were being reviewed by the Town Staff and experts for final consideration. On October 27, 2004, the Town Attorney spoke with special legal counsel, Daniel Rosenbaum, who advised the Town Attorney that they anticipated making a

presentation regarding this potential eminent domain proceeding in December, 2004. Subsequent to that telephone conversation, the Town Attorney spoke with Interim Town Administrator, Chris Kovanes, on November 22, 2004, who indicated that our special legal counsel had decided to meet individually with the Town Councilmembers. On December 8, 2004, the Town Attorney spoke with Mr. Jeff Rembaum, one of our special legal counsels, who advised that his firm was ready to proceed with the litigation, but would be seeking direction as to how to proceed from the members of the Town Council. He indicated at that time that he would like to meet individually with each Councilmember and thereafter, would request that this item be placed on the Agenda for a Town Council Meeting so that his firm could receive official direction from the Town as to how to proceed. On January 20, 2005, the Town Attorney again spoke with Mr. Jeff Rembaum who indicated that he was waiting for the Town to get the URS access study updated to reflect the changes due to OTTED and other factors, and that his firm needed this update before Council would be in a position to make an informed decision. On March 4, 2005, the Town Attorney spoke with Mr. Jeff Rembaum who indicated that Ms. Margaret Wu has been assigned this matter as liaison for the Town with his office. He anticipated that this matter would be brought before the Town Council at one of its meetings in April, 2005. At the Town Council Meeting of April 20, 2005, Mr. Cohen advised the Town Council that he and Margaret Wu and other Staff members would be meeting with Mr. Jeff Rembaum regarding this matter the following day, April 21, 2005, to discuss the status of this proposed litigation. On May 6, 2005, the Town Attorney spoke with Margaret Wu, who indicated that a number of issues need to be addressed prior to the institution of any lawsuit and that the Administration would be reviewing these with the individual Town Councilmembers. On August 3, 2005, the Town Attorney again spoke with Margaret Wu, who reiterated that there were still outstanding issues to be resolved before a decision could be reached by the Council regarding the initiation of a lawsuit. On September 8, 2005, the Town Attorney's Office spoke with Mr. Rosenbaum, who advised that there has been no change since the last Litigation Update Report. On September 23, 2005, Assistant Town Attorney Parke was advised by Mr. Kovanes that he knew of no changes regarding this matter. On November 4, 2005, Margaret Wu advised the Town Attorney's office that there had been no changes relevant to this matter since the last Litigation Update Report. Subsequent thereto, the Town Attorney again spoke with Margaret Wu on several occasions, the latest being February 28, 2006, who indicated that there had been no changes in this matter. On August 2, 2006, Mr. Cohen reconfirmed to the Town Attorney that there had been no changes in this matter.

2. **DePaola v. Town of Davie:** Plaintiff DePaola filed a lawsuit against the Town of Davie and the Town filed a Motion to Dismiss. The Motion to Dismiss was heard by Judge Burnstein who requested that both sides file Memoranda of Law in support of their positions and she took the case under advisement. Both sides did file their Memoranda of Law in support of their positions on the Town's Motion to Dismiss, and on November 13, 2002, the Court entered an Order granting the Town's Motion to Dismiss and entered an Order of Dismissal. The Court found that Mr. DePaola had administrative remedies as a career service employee, either by

pursuing a civil service appeal or by a grievance procedure established under a collective bargaining agreement, but he had failed to pursue his administrative remedies. A copy the Court's Order of November 13, 2002, has been previously provided to the Town Council for its review. The Plaintiff DePaola filed a motion with the Court for re-hearing of the Town's Motion to Dismiss, which motion was denied by the Trial Court. The attorneys for DePaola filed a Notice of Appeal of the Trial Court's decision to the 4<sup>th</sup> District Court of Appeal where the matter is now pending, but failed to file their Appellate Brief within the time set by the Rules of Appellate Procedure. As indicated in prior Town Attorney Litigation Update Reports, the Town's Motion to Dismiss was filed with the 4<sup>th</sup> District Court of Appeal due to the Plaintiff's failure to file in a timely manner, its Appellate Brief, but the Motion was denied and the 4<sup>th</sup> District Court of Appeal extended the time in which the Plaintiff could file his Brief. The Plaintiff thereafter, did file his Brief and Mr. Burke's office in turn, prepared and filed its Answer Brief on December 9, 2003. Thereafter, the Appellant, Mr. DePaola, filed his Reply Brief with the 4<sup>th</sup> District Court of Appeal of Florida, and a copy has been furnished to the Town Administrator, Mayor and Councilmembers for their information. Oral argument was conducted and presented to the 4<sup>th</sup> District Court of Appeal by both sides on February 10, 2004. On April 28, 2004, the Town Attorney received a copy of the 4<sup>th</sup> District Court of Appeal's decision from Michael T. Burke, special legal counsel. The 4<sup>th</sup> District Court of Appeal reversed the lower court's Final Judgment dismissing Mr. DePaola's Complaint finding that his Complaint stated a cause of action and remanded the case to the trial court for proceedings consistent with the Court of Appeal's opinion. On May 26, 2004, the Town Attorney spoke with Mr. Burke's legal assistant who indicated that Mr. Burke's office would be filing an answer and would be ultimately scheduling the Plaintiff for deposition and would be conducting discovery in the near future. On May 27, 2004, Mr. Burke telephoned the Town Attorney to tell him that the Court would be permitting the Plaintiff to file an Amended Complaint. During the week of June 7, 2004, the Town Attorney spoke with Mr. Burke who indicated that the Plaintiff had filed an Amended Complaint and his office was preparing an appropriate response. He indicated that discovery in this matter would commence shortly. On June 25, 2004, the Town of Davie filed its Answer and Defenses to the Plaintiff's Amended Complaint. On September 8, 2004, the Town Attorney spoke with Mr. Burke who indicated that his office was continuing to conduct discovery in this matter. On September 28, 2004, the Town Attorney spoke with Mr. Burke who indicated that his office had received the Plaintiff's Answers to the Interrogatories served upon the Plaintiff as well as the documents his office had requested to be produced by the Plaintiff. On November 8, 2004, the Town Attorney spoke with Mr. Burke's legal assistant, who advised that this matter was in the discovery phase and his office was currently setting depositions. During the week of January 24, 2005, the Town Attorney spoke with Mr. Burke, who indicated that the Plaintiff's deposition had been taken and that discovery was ongoing. On February 14, 2005, the Town Attorney spoke with Mr. Burke, who indicated that former Town Administrators Middaugh and Willi, along with former Vice Mayor Weiner, had been deposed. On March 3, 2005, the Town Attorney spoke with Mr. Burke who indicated both sides are continuing to conduct discovery and the matter has not yet been set for trial. Mr. Burke's office recently received a settlement proposal from the Plaintiff's attorney. Mr. Burke indicated on March 24, 2005,

that he would be reviewing the settlement proposal and presenting it early the following week to the Florida Municipal Investment Trust, Risk Management and ultimately, to the Town Council at an Executive Session. On July 7, 2005, pursuant to Mr. Burke's request, the Town Attorney, with the Town Council's approval, scheduled an Executive Session on this matter for August 3, 2005, at 6:30 P.M. On August 3, 2005, as scheduled, an Executive Session on this matter was held and Mr. Burke was given direction as to how to proceed. On October 20, 2005, the Town Attorney's Office spoke with Mr. Burke, who advised that the status of this litigation remained unchanged and that the Plaintiff's attorney was reviewing and revising its settlement proposal. On November 22, 2005, the Town Attorney spoke with Mr. Burke, who indicated that there had been no change in the status of this litigation since the last Litigation Update Report which he attributed to Hurricane Wilma. During a conversation with Mr. Burke regarding this matter on January 17, 2006, he indicated that several depositions had been scheduled to be conducted in February, 2006. On June 19, 2006, the Town Attorney spoke with Mr. Burke who indicated that there had been no change in the status of the litigation since the last Litigation Update Report. On approximately August 31, 2006, the Town Attorney spoke with Mr. Burke who advised that there had been no change in the status of this litigation. On September 22, 2006, the Town Attorney spoke with Mr. Burke, who advised that he had just received a letter from the Plaintiff's Attorney responding to Mr. Burke's request and providing Mr. Burke with information regarding the Plaintiff's claimed losses. Mr. Burke anticipates asking for an Executive Session with Council in the month of October to review the Plaintiff's response.

3. **SESSA, ET AL V. TOWN OF DAVIE (TOWN OF DAVIE V. MALT):** As indicated in previous reports, the Town Attorney's Office successfully recovered various sums from a number of property owners relevant to the special road assessment as a result of filing several lawsuits to enforce the road assessment liens recorded against their properties. The various settlement proposals have been outlined in previous Town Attorney's Litigation Update Reports, and have each been brought before the Town Council for its consideration and ultimate approval. As each property owner has transmitted the funds to the Town, the Town Attorney's Office has filed appropriate pleadings releasing the Lis Pendens and dismissing the cases filed against these Defendants. The Town Attorney's Office continues in its efforts to recover the money owed the Town from the special road assessments. The Town Attorney's Office had filed a lawsuit against property owner, Robert Malt, to foreclose its lien on Mr. Malt's property. The Defendant filed a Motion to Dismiss, but the Court at a hearing on August 10, 2004, denied the Motion to Dismiss and ordered the Defendant to file an answer to the Complaint filed by the Town Attorneys' Office. The Town Attorney's Office received Mr. Malt's Answer and Affirmative Defenses to the Town's Complaint and Counterclaim and the Town Attorney's Office filed a Motion to Strike the Defendant's Affirmative Defenses, a Motion to Dismiss the Defendant's Counterclaim and a Motion for Judgment on the Pleadings. At the Town Council's Meeting of October 6, 2004, the Town Council was advised that a mediation had been scheduled for October 14, 2004, and the Town Council gave the Town Attorney authority to enter into meaningful settlement negotiations with the Defendant subject to the ultimate review and approval by the Town Council. No settlement was reached

at the mediation session and the parties reached an impasse. Accordingly, the hearing on the Town's Motion to Strike the Defendant's Affirmative Defenses, Motion to Dismiss the Defendant's Counterclaim, and a Motion for Judgment on the Pleadings was heard by the Court on October 19, 2004. After oral argument by both sides, the Court granted the Town's Motion to Strike the Defendant's Affirmative Defenses, granted the Town's Motion to Dismiss his Counterclaim and granted the Town's Motion for Judgment on the Pleadings. A proposed Order was submitted by the Town Attorney's Office to the Court for its review and was signed by the Court on November 1, 2004. A copy of the Order signed by Judge Fleet has been forwarded to the Town Council for its review. Thereafter, the Defendant filed a Motion for Rehearing relevant to the Court's decision and the Town Attorney's Office filed a response in opposition to the Defendant's Motion for Rehearing. The Court ultimately denied the Defendant's Motion for Rehearing. Recently, the Town Attorney's Office discovered another lien holder and the Court has granted the Town's Motion to add that lien holder as an additional defendant in this foreclosure litigation. The Town Attorney's Office has served this additional defendant and has brought it into this action as a party to the special assessment foreclosure action. The Town Attorney's Office filed a Motion for Final Judgment in this matter and a hearing was held on October 11, 2005, at which time a Final Judgment of Foreclosure was entered by the Court in favor of the Town of Davie. A foreclosure sale of the property was scheduled for November 10, 2005, but on November 9, 2005, the defendant tendered a cashier's check in the sum of \$96,764.82, which sum was immediately transmitted to the Acting Town Administrator, Mr. Cohen. The defendant, Mr. Malt filed an Appeal of Judge Fleet's Order granting the Town a Final Judgment of Foreclosure, with the 4<sup>th</sup> District Court of Appeal. Said appeal is now pending. The Town Attorney has filed a Motion with the 4<sup>th</sup> District Court of Appeal seeking an Order awarding the Town its legal fees that it may incur as a result of the Defendant filing his appeal of the Trial Court's Order with the Appellate Court. The Defendant has filed a response to the Town's Motion for an Order awarding the Town its legal fees incurred during the appeal. The Town Attorney's Office thereafter received the Defendant's Initial Appellate Brief and the Town Attorney's Office thereafter prepared its Answer Brief which it timely filed with the 4<sup>th</sup> District Court of Appeal. The Town Attorney's Office thereafter received a Reply Brief from defendant's attorney in response to the Answer Brief filed by the Town. On August 17, 2006, the Town Attorney's Office received the decision of the 4<sup>th</sup> District Court of Appeal affirming the Trial Court's Judgment in favor of the Town of Davie. The 4<sup>th</sup> District Court of Appeal also granted the Town's Motion filed by the Town Attorney's Office for Attorneys Fees pursuant to Florida Statute, Section 170.10 and denying the Appellant, Robert Malt's Motion for Attorneys Fees and Cost. On September 1, 2006, the Town Attorney's Office received the Defendant's Motion for Re-Hearing, and within the time allowed properly filed a Response in Opposition thereto. The Town Attorney's Office has also filed a Motion asking the Court to Determine the Amount of Attorney's Fees to be Awarded to the Town on the Appellate level.

4. **TOWN OF DAVIE V. LAMAR ELECTRONICS, INC.:** The Town successfully prosecuted Lamar Electronics, Inc. for several violations of the Town Code before the Special Master.

Lamar Electronics has filed an Appeal with the Circuit Court of Broward County. Lamar Electronics filed its Initial Brief and in response, the Town Attorney's Office on behalf of the Town, has filed an Answer Brief. Lamar Electronics in response, filed a Reply Brief. The Town filed a Motion to Strike the Reply Brief of the property owner and after hearing, the Court allowed the Reply Brief to stand, but however, with the caveat that Lamar Electronics will not be able to utilize their argument with regard to the Right to Farm Act. The Court now has before it the various Briefs filed by the parties and the Town Attorney's Office is awaiting the Court's ruling with regard to the Defendant's appeal. As of the date of this Litigation Update Report, December 8, 2004, there has not yet been a ruling by the Court. In the meantime, the Court entered an Order Setting Case Management and requiring the parties to appear before the Court in this matter on November 5, 2004, at which time the Town Attorney's Office appeared and advised the Court of the status of this matter. The Judge ordered that there be oral argument in this case for January 27, 2005, before it would enter a decision in this matter. On January 27, 2005, Attorney Martin Kiar successfully argued the Town's position at Oral Argument before the Court. At the conclusion of the Oral Argument by the attorneys for the parties, the Court ruled in favor of the Town and upheld the ruling of the Special Master which included a provision that the waste previously deposited on the Respondent's property be removed. A copy of the transcript was ordered and received by the Town Attorney's Office and a proposed Order submitted to the Judge for his signature on February 2, 2005. The Town Attorney's Office has now received Judge Carney's Order upholding the ruling of the Special Master. As a result, the Town Attorney's Office along with the Code Compliance Division for the Town of Davie and the Town Engineer's Office and other Davie personnel are meeting with Lamar Electronics and its attorneys to determine the appropriate method for removal of the solid waste from the subject properties. In the interim, a Non-Compliance Hearing is being scheduled before the Special Magistrate. On April 6, 2005, a settlement proposal was received from the property owner by the Town Attorney's Office. This settlement proposal has been reviewed by the Town Attorney's Office and has been forwarded to the Council for its review. Since then, the Town Attorney's Office has met with representatives for the defendant and a prospective buyer of the subject property, and has been involved in further negotiations regarding a possible settlement of this litigation. A Special Executive Session was held on May 4, 2005. Since the Special Executive Session held on May 4, 2005, a new settlement proposal was received from the Respondent's legal counsel and this was distributed among the Town Councilmembers as well as the Town Administrator. An Executive Session was held on June 1, 2005, and the Town Attorney's Office was given direction. In accordance with that direction, the Town Attorney wrote to the attorney for the property owner. Thereafter, the property owner through its attorney, rejected the Town's counter-proposal. Further, the Town Council was previously advised that a prospective purchaser had withdrawn from its option to purchase the subject property. Accordingly, the Town Attorney's Office moved forward with its non-compliance hearing which was heard on June 22, 2005, and June 28, 2005, during which Assistant Town Attorney, Martin Kiar, successfully prosecuted the Defendant and one other property owner at the non-compliance hearings before the Special Magistrate. After evidence was presented and testimony taken, the Special Magistrate determined that Lamar Electronics and a new property

owner had not complied with the Special Magistrate's Order. Mr. Kiar argued that there were 3 separate cases in this matter and that the Town was entitled to fines from the date the Special Magistrate's Final Orders expired until the date of June 28, 2005. The Special Magistrate found that the Town was in fact entitled to fines in the 3 separate cases. An oral order to this effect was announced in open court and thereafter, the Special Magistrate issued her 3 written Orders confirming same. Upon receipt of the 3 Orders, the Town Attorney's Office promptly proceeded to record the Orders in the Public Records of Broward County. Lamar Electronics, Inc. has filed 3 Notices of Appeal in the Circuit Court appealing the Special Magistrate's Final Orders. Lamar Electronics filed a Motion to Transfer and Consolidate its 3 new Notices of Appeal. The Town Attorney's Office prepared its Reply to Appellant's Motion to Transfer and Consolidate and filed its Reply with the Court. A hearing on Lamar's Motion to Consolidate was heard on September 29, 2005, and the Court granted that Motion. The Appellant was required to file its Initial Brief in November, but the Court granted it an extension until January, 2006. Subsequent thereto, the Court entered an Order requiring that the Appellant, Lamar Electronics show good cause as to why it had failed to file its Initial Brief and why its Appeal should not be dismissed. The Appellant filed a Response to the Order to Show Cause with the Court and thereafter, the Court granted Appellant yet another extension of time in which to file its Initial Brief. As of September 22, 2006, the status of this litigation remains the same and the Town Attorney's Office is awaiting receipt of Appellant's Brief.

5. **PARK CITY MANAGEMENT CORP. V. TOWN OF DAVIE AND PARK CITY ESTATES HOMEOWNERS ASSOCIATION:** The Town has been served with a Complaint for Declaratory Relief relevant to the issue of the maintenance of the 18<sup>th</sup> Street median strip within the Park City Mobile Home Park. The Town Attorney's Office prepared a Motion to Dismiss and at the hearing, the Court held that the Complaint was brought in a procedurally correct manner and the Court will be hearing the merits of the case. In the meantime, members of the Homeowners Association have expressed their desire to withdraw as a party plaintiff in this litigation. The Plaintiff's attorney in turn, filed a Motion to Amend its Complaint to drop the Homeowners Association as a Plaintiff and to name it along with the Town of Davie as a Defendant. The Judge allowed the Plaintiff to file its Amended Complaint which names Park City Homeowners' Association as a defendant in the lawsuit. It should be noted that the jurisdictional limitations on Count II for Specific Performance of an alleged oral contract allegedly entered into between the Town of Davie and Park City Management is capped for jurisdictional purposes at the total amount of \$15,000.00 since the County Court does not have jurisdiction beyond that amount. Opposing counsel stipulated to that fact. The Town Attorney's Office prepared an Answer which it filed in response to the Complaint and has begun conducting discovery. The Town Attorney's Office recently sent out its First Request for Admissions demanding that the Plaintiff admit the correctness of the allegations set forth within that pleading. A series of Interrogatories and Request for Production of Documents was also served upon the Plaintiff by the Town Attorney's Office. A response to the Request for Admissions and Answers to the Interrogatories have been received. In the



meantime, Co-Defendant, Park City Estates Homeowners Association has hired an attorney to represent its interest and filed a Motion to Dismiss the Complaint as to that Defendant. Recently, a hearing was held on the Homeowners' Motion to Dismiss which after oral argument, the Court denied. The Town Attorney's Office has recently initiated scheduling depositions in this case. The first deposition of management personnel, namely Mrs. Neal, was conducted recently by the Town Attorney's Office. Thereafter, several other depositions were conducted by this office on March 2, 2005. These depositions consisted of potential witnesses for the Town and for all other parties in this lawsuit. Further, other depositions will be scheduled by the Town Attorney's Office of potential witnesses. One such deposition was conducted on March 7, 2005. The discovery phase of this litigation continues. At a recent Town Council Meeting, in response to an inquiry from a citizen as to whether any individuals had been personally named as defendants in this litigation, the Town Attorney's Office responded advising that no individuals had been personally named as defendants in this litigation and a Memorandum was forwarded to the Town Councilmembers confirming this fact. The Town Attorney's Office has conducted further discovery in this case and further discovery will be ongoing. The Town Attorney recently requested and in fact, did meet with Mr. Cohen and his staff to map future strategy in this case and will proceed accordingly. The Town Attorney's Office recently filed a Motion for Summary Judgment which motion was heard on March 20, 2006. The Court granted the Town's Motion for Summary Judgment in part relevant to the issue of attorney's fees. The Court's Order determined that the Plaintiff's request for an award of attorney's fees against the Town should it prevail in this litigation, is not permitted under Florida law. As a result, regardless of the outcome of this litigation, both parties will be responsible for their own legal fees and Park City Management Corp. will not be able to recover legal fees from the Town of Davie. Discovery is ongoing and it is anticipated that additional discovery will need to be conducted in this litigation prior to any trial of this matter.

6. **FEINGOLD V. TOWN OF DAVIE:** The Town Attorney has been advised by Mr. McDuff's office that a Complaint was filed against the Town of Davie alleging that the Plaintiff, while riding his horse, had been thrown from the horse by electrical wiring and is claiming bodily injury and has sued the Town and FPL. On August 10, 2004, the Town Attorney spoke with Mr. McDuff's legal assistant, who indicated that his office had filed a Motion to Dismiss the Complaint as it pertains to the Town of Davie and said Motion is still pending. On September 8, 2004, the Town Attorney again discussed this litigation with Mr. McDuff, who indicated that several depositions have been taken of various witnesses and that Mr. Feingold's deposition would be taken shortly. On September 28, 2004, the Town Attorney spoke with Mr. McDuff's legal assistant in his absence, who indicated that due to the recent hurricanes, a number of the depositions that had been scheduled had been canceled and rescheduled. On November 8, 2004, the Town Attorney again spoke with Mr. McDuff, who advised that his office had taken the deposition of the Plaintiff, Mr. Feingold, and that his office was currently scheduling other depositions to be taken. He reiterated the fact that no trial date in this matter has yet been set. On December 8, 2004, the Town Attorney spoke with Mr. McDuff's legal assistant, who indicated that they have recently received some of the medical records

requested by Mr. McDuff's office and they are awaiting production of further documents. On January 20, 2005 the Town Attorney spoke with Mr. McDuff's legal assistant who indicated that recently the Plaintiff offered to settle this matter for \$49,999.99. In turn, Mr. McDuff's firm submitted an offer to settle the matter for the sum of \$1001.00. On February 2, 2005, the Town Attorney again spoke with Mr. McDuff's legal assistant, who indicated that their office had not received any response to their offer of settlement. On May 16, 2005, the Town Attorney's Office received an updated Status Report on this litigation indicating that approximately 10 representatives from the Town of Davie were scheduled to be deposed in the first half of June, 2005. On June 23, 2005, the Town Attorney's Office spoke with Mr. McDuff's legal assistant, who confirmed that several Town Staff personnel had been deposed in the first half of June, 2005, as scheduled. On August 24, 2005, the Town Attorney spoke with Mr. McDuff who indicated that the status of this litigation remained the same since the previous Litigation Update Report, and that discovery is ongoing. On December 20, 2005, the Town Attorney spoke with Mr. McDuff's legal assistant, who indicated that there had been no changes in the status of this litigation since the last Litigation Update Report. On March 16, 2006, the Town Attorney spoke with Mr. McDuff who indicated that the Plaintiff's attorney had filed a Motion with the Court to permit it to amend its Complaint to bring in additional party defendants. On May 23, 2006, the Town Attorney spoke with Mr. McDuff's legal assistant who indicated that the Plaintiff had voluntarily dismissed Florida Power & Light and Unknown Defendant One and Two as defendants in this litigation. On August 22, 2006, the Town Attorney spoke with Mr. McDuff's Legal Assistant who advised the Town Attorney that the Plaintiff had filed an Amended Complaint, and that Mr. McDuff had filed a Motion to Dismiss Count 2 of the Amended Complaint and had filed an Answer as to Count 1. On September 22, 2006, the Town Attorney spoke with Mr. McDuff's legal assistant who advised that the status of this litigation remains the same and that no hearing has been set regarding the Town's Motion to Dismiss Count 2 of the Amended Complaint.

7. **TOWN OF DAVIE V. OSVALDO CIEDI:** The Town filed a six count Code Enforcement action against the property owner alleging that he and others had violated the Davie Town Code and Charter. Specifically, the property owner was charged with violating Section 12 of the Town Charter, entitled, Franchise; Section 12-32 of the Town Code entitled Non-Permitted Use; Section 9-3 entitled Deposit of Waste Material on Private Property Prohibited; Section 12-328(B) entitled Engineering Permits; Section 12-33(U) entitled Nuisance; and Section 9-22 entitled garbage service required. After a several hour Hearing the Special Magistrate found the property owner in violation of the provisions of the Town Code and Charter mentioned above. The property owner has been ordered to come into compliance with the Town Code and Charter within 30 days from the Special Magistrate's Order. The Town Attorneys, the Town's Code Enforcement Officials, its Engineering Department and its Planning & Zoning Department met with Mr. Ciedi to inform him how he is to come into compliance with the Town Code by removing the solid waste in a safe manner. Mr. Ciedi has failed to remove the waste in compliance with the Davie Town Code and has failed to abide by the Order of the Special Magistrate and as a result, a Non-Compliance hearing is being set down so that the Special Magistrate can issue the appropriate

fines. The property owner filed a Motion seeking a rehearing before the Special Magistrate and the Town Attorney Office's filed a Brief in Opposition to that Motion. Further, at a hearing held before the Special Magistrate, the Court determined that it had no jurisdiction to entertain the Motion for Rehearing as it was time barred. The parties have met with their attorneys along with Staff from the Town Engineering Department and Code Enforcement Division per the property owner's request on a number of occasions. The most recent meeting took place on September 22, 2005, with attorneys for the Town of Davie, the attorneys for the property owner, the Town's Code Enforcement Division, and the engineers representing both the Town and the property owner. It was determined that the engineers would meet sometime the following week to determine the amount of solid waste currently encumbering the property. Once that is determined, the attorney for the property owner has indicated that the solid waste will be removed in a manner required by the Town. On November 22, 2005, the Town Attorney spoke with the Town Engineer who indicated that he had met with Mr. Ciedi's engineer and had provided the property owner's engineer with certain information needed to determine the amount of waste to be removed. Thereafter, Mr. Ciedi's attorney indicated that he had withdrawn as the property owner's attorney and subsequent to his withdrawing from this matter, a meeting was held with the property owner and Waste Management on December 21, 2005, to discuss removal of the solid waste. On January 3, 2006, the Town Attorney spoke with Mr. Peters, who indicated the property owner had filed an application relevant to the removal of the solid waste material. On April 6, 2006 the Town Attorney spoke with the Town Engineer who indicated that he would confirm whether or not the property owner had in fact removed the solid waste material. On April 18<sup>th</sup>, 2006, the Town Attorney's Office met with Code Enforcement. Code Enforcement advised Mr. Ciede that if he did not receive an engineering permit to remove the solid waste from the property immediately the Town would proceed with a Non Compliance Hearing. On July 18, 2006, the Town Attorney spoke with Mr. Stallone who indicated that the Town had met with Mr. Ciedi and provided him with certain zoning information related to his property and accordingly, the Special Magistrate's hearing was continued to August 29, 2006. Do to hurricane Ernesto, the Hearing before the Special Magistrate was postponed and is to be reset.

8. **MARINA SWEAT V. TOWN OF DAVIE:** The Plaintiff originally filed a Complaint alleging sexual harassment and retaliation which was dismissed by the Court. She has since filed a Second Amended Complaint for retaliation only. Our special legal counsel, Mr. Harry Boreth, filed a Motion to Dismiss the Second Amended Complaint which was scheduled for hearing on March 11, 2005. On March 24, 2005, the Town Attorney spoke with Mr. Boreth who advised the Town Attorney that Judge Damoorgian signed an Order on March 11, 2005, granting the Town's Motion to Dismiss the Plaintiff's Second Amended Complaint, and gave the Plaintiff 15 days to amend her Complaint. On April 22, 2005, the Town Attorney spoke with Mr. Boreth, who indicated that the Plaintiff had failed to file their Third Amended Complaint within the 15 days allowed by the Court and accordingly, the Plaintiff filed a Motion seeking to be allowed to file their Third Amended Complaint after that date. Mr. Boreth indicated that he had filed a response in opposition to their Motion, and that the matter was scheduled to be heard at hearing on May 5, 2005. The Town Attorney's Office

was advised by Mr. Boreth on May 6, 2005, that the Plaintiff was permitted to file its Third Amended Complaint. On July 7, 2005, the Town Attorney spoke with Mr. Boreth, who indicated that the Plaintiff had filed its Third Amended Complaint and once again, Mr. Boreth's office had filed yet, another Motion to Dismiss. Oral argument on the Town's Motion to Dismiss was heard on July 14, 2005, and on July 20, 2005, Mr. Boreth advised the Town Attorney that the Town's Motion had been granted in part and denied in part. On August 24, 2005, the Town Attorney spoke with Mr. Boreth's partner, Mr. Lloyd Glasser who confirmed that his office has filed a timely response to the Third Amended Complaint and that his office has begun to conduct discovery in this case. On October 21, 2005, the Town Attorney spoke with Mr. Boreth's legal assistant, who indicated that discovery was ongoing and that the Plaintiff's deposition is scheduled for November 16, 2005. Further, the parties had agreed to the entry of an Order granting the Town's Motion to Compel Discovery and she expected to receive the requested discovery documents shortly. On November 4, 2005, the Town Attorney spoke with Mr. Boreth, who indicated that due to Hurricane Wilma, there had been no change in the status of this litigation. Further, on November 16, 2005, the Town Attorney received notice from Mr. Boreth's office indicating that the deposition of Marina Sweat had been re-noticed to December 13, 2005. On November 22, 2005, the Town Attorney spoke with Mr. Boreth who indicated that the Plaintiff's deposition is still scheduled for that date. On December 9, 2005, the Town Attorney spoke with Mr. Boreth's law partner, who indicated that they had only recently received extensive discovery production which the Plaintiff was compelled to provide by Court Order. He indicated that the deposition of the Plaintiff might accordingly, be rescheduled to a later date. On January 3, 2006, the Town Attorney spoke with Mr. Boreth, who confirmed that the Plaintiff's deposition had in fact been re-noticed to January 6, 2006. On March 16, 2006, the Town Attorney spoke with Mr. Boreth's partner, Lloyd Glasser, who indicated that the continuation of the Plaintiff's deposition was scheduled for March 23, 2006. On March 24, 2006, the Town Attorney spoke with Mr. Glasser, who indicated that the Plaintiff's deposition had in fact been conducted and lasted approximately 6-1/2 hours. On April 6, 2006, the Town Attorney spoke with Mr. Glasser who indicated that he had ordered the transcript of the Plaintiff's deposition and was proceeding with the litigation. On April 18, 2006, the Town Attorney spoke with Mr. Glasser who indicated that there had been no change in the status of this litigation since the last Litigation Update Report. On August 22, 2006, the Town Attorney spoke with Mr. Boreth's partner, Mr. Glasser, who indicated that the Plaintiff had begun setting a series of Depositions and therefore he will not be filing the Motion for Summary Judgment until after the Depositions are taken. On September 22, 2006, the Town Attorney spoke with Mr. Boreth who indicated that there had been no change in this litigation, and that discovery was still ongoing.

9. **MATTHEW MALIN AND BRANDON RIVERA V. TOWN OF DAVIE POLICE DEPARTMENT.** The Town has been served with a Summons and Complain in which the Plaintiff alleges religious discrimination. The case has been forwarded to the Town's insurer, SERMA. The Town Attorney has spoken with Mr. Harry Boreth, who has been assigned to defend the Town and Mr. Boreth has indicated that the Town denies the allegations and is

vigorously defending the lawsuit. On January 3, 2006, the Town Attorney spoke with Mr. Boreth, who indicated that a Motion to Dismiss had been filed with the Court in this case. On January 17, 2006, the Town Attorney spoke with Mr. Boreth, who indicated that the Town's Motion to Dismiss was still pending. On April 18, 2006, the Town Attorney spoke with Mr. Boreth's law partner who indicated that the hearing on the Town's Motion to Dismiss had been rescheduled to May, 2006. On June 8, 2006, Mr. Boreth advised that the Hearing on the Motion to Dismiss was now scheduled to be heard in June 29, 2006. On July 18, 2006, the Town Attorney spoke with Mr. Boreth who indicated that the Motion to Dismiss had not been heard as previously scheduled and a hearing date had not been rescheduled. Mr. Boreth indicated that further discovery was needed in this matter and that discover was ongoing. On September 22, 2006, the Town Attorney spoke with Mr. Boreth who indicated that the Town's Motion to Dismiss had been heard on September 21, 2006. The Judge dismissed the case against the Davie Police Department, but allowed the Plaintiff 20 days to Amend their Complaint to bring in the proper party Defendant.

10. **YYBC, INC. D/B/A EDEN V. TOWN OF DAVIE:** The Town has been sued and the Plaintiff is seeking to have the Court invalidate the Town's Adult Entertainment Ordinance. Special legal counsel, Michael Burke, who is now representing the Town as special legal counsel with the consent of the Town's insurer, SERMA, has prepared an Answer on behalf of the Town which has been filed with the Court. On March 1, 2006, an Executive Session was held by Mr. Burke and the Town Attorney with Town Council to discuss litigation strategy. On March 16, 2006, the Town Attorney spoke with Mr. Burke who indicated that the Court had set a Scheduling Conference in this case for April 14, 2006. On April 18, 2006, the Town Attorney spoke with Mr. Burke who indicated that the Court had cancelled the Status Conference and it has not as yet been rescheduled. On May 4, 2006, the Town Attorney spoke with Mr. Burke who indicated that trial in this matter has now been set for early next year, and the Court has entered an Order setting the deadlines for Discovery and requiring the parties to go to mediation. On May 23, 2006, the Town Attorney spoke with Mr. Burke, who advised that the Plaintiffs were seeking permission from the Court to file an Amended Complaint to challenge the Town's newly adopted Ordinance. On June 19, 2006, the Town Attorney spoke with Mr. Burke, who indicated that the Plaintiff has since filed an Amended Complaint and his office was in the process of preparing an Answer to be served on behalf of the Town. Mr. Burke has indicated that the trial in this matter has been reset by the Court to mid April, 2007. The Town Attorney has been advised that discovery is ongoing in this matter and the Plaintiff recently served the Town with a Request for Production of Documents and propounded upon the Town a series of written Interrogatories. On August 21, 2006 the Town Attorney spoke with Mr. Burke who indicated that his office had filed the Town's Answers to the written Interrogatories propounded upon the Town and that discovery was ongoing. On September 22, 2006, the Town Attorney spoke with Mr. Burke who indicated that the status of this litigation remained the same.
11. **TOWN OF DAVIE V. ONTANEDA:** As the Town Council will recall, code violations were found against property owned by Lamar Electronics, Inc. for operating a solid waste

management facility. After code violations were found, the Ontanedas purchased 5 acres of Lamar's property which is adjacent to the residential community. Thereafter, the Town Attorney's Office obtained significant fines against the property now owned by the Ontanedas. The Town Administration authorized the Town Attorney's Office to file a lawsuit to foreclose the liens on the subject property. Suit has been filed. The Town Attorney's Office recently received the Defendants' Answer and Affirmative Defenses to its Complaint. The Town Attorney's Office has prepared a Motion to Strike several provisions of the Answer as well as the various Affirmative Defenses alleged by the Defendants and will be seeking a hearing date on its Motion. The Town Attorney's Office has written to the Court requesting that the Court specially set a hearing on its Motion to Strike and its various Affirmative Defenses and is awaiting a response from the Court. Recently the Attorney for the Defendant filed a Motion with the Court to Require The Parties to Attend Mediation. The Order was granted and the parties are now scheduled to go to Mediation on October 9, 2006.

13. **NATALIA ECHAVARRIA V. TOWN OF DAVIE:** Plaintiff has sued the Town alleging violation of the Family Medical Leave Act and the Fair Labor Standards Act. Special Legal Counsel assigned by our insurer, SERMA, Ken Carman, has prepared an Answer to the Plaintiff's Complaint. On August 22, 2006, the Town Attorney spoke with Mr. Carman's Legal Assistant who advised that the status of this litigation remains the same.
14. **WAL-MART STORES EAST L.P. V. TOWN OF DAVIE:** The property owner has filed a Petition for Writ of Mandamus and a Petition for Writ of Certiorari relevant to the Town Council's July 19, 2006, denial of the applicant's site plan. The Town Attorney's Office will be filing an appropriate response on behalf of the Town with the Court. In the meantime, as the applicant filed two separate lawsuits regarding the same subject matter and the same parties, and two Judges issued two separate Orders to Show Cause to respond to the Petition for Writ of Certiorari, the Town Attorney's Office filed a Motion to Consolidate the two cases. The Motion on Consolidation was heard before Judge Burnstein and the Town Attorney successfully argued the position of the Town and the Court granted the Town's Motion.
15. **LORRYCE BROWN V. TOWN OF DAVIE:** The Town Attorney has been advised by Mr. McDuff's office that a Complaint was filed against the Town of Davie alleging that the Plaintiff while riding her horse had been thrown from the horse by electrical wiring, and is claiming bodily injury and has sued the Town. The Florida League of Cities has assigned this matter to Special Counsel, Richard McDuff. Mr McDuff has filed an Answer to Count 1 and a Motion to Dismiss regarding Count 2. His office currently conducting discovery.